

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2628 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GORDHANBHAI RAMANBHAI PATEL

Versus

COMPETENT AUTHORITY & ADDL. COLLECTOR (U.L.C.)

Appearance:

MR SK PATEL for Petitioner
Mr DN PATEL, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 11/12/97

ORAL JUDGEMENT

With the consent of the ld. Advocates appearing for the respective parties, this petition is finally heard today.

The petitioner, by way of this petition, has challenged the order dated 23.4.1993 passed by the

Competent Authority and Addl. Collector (ULC), confirmed in appeal by the Urban Land Tribunal by the order dated 31st August 1995. Reading both the orders, it is clear that ample opportunities were given to the petitioner to remain present before the authorities. However, the petitioner has not remained present before the first authority and the Advocate has only sought adjournments on one ground or other. Even before the Tribunal, the Advocate for the petitioner has not remained present on the date of hearing, when an application was filed by the petitioner for adjournment. Thus, the authorities, in my view, were justified in deciding the case on merits, without hearing the Advocate for the petitioner.

The only request made before me is to remand the matter so that the petitioner can produce appropriate evidence before the authorities and in light of the evidence, the case of the petitioner can be considered. As observed earlier, the petitioner was given ample opportunities to present his case, however, the opportunities were not availed of. In any case, as far as the decision rendered by the Tribunal is concerned, admittedly, the petitioner has remained present on the date of hearing and the Advocate has not remained present and therefore, the petitioner cannot be made to suffer on account of the carelessness of his Advocate.

Considering this aspect of the case, the end of justice shall be met, if a fresh opportunity is given to the petitioner by remanding the matter to the Competent Authority and Addl. Collector (ULC).

In the result, the petition is allowed. The impugned order at Annexure.A dated 23.4.12993 and the order at Annexure.B dated 31.8.1995 passed by the authorities below are quashed and set aside. The matter is remanded to the Competent Authority and Addl. Collector (ULC) to take fresh decision in the matter in accordance with law after hearing the petitioner. The Competent Authority shall give a fixed date of hearing to the petitioner and thereafter proceed to decide the case and complete the same within a period of four weeks from the date of hearing. It will be open for the parties to lead evidence. Since the petitioner is negligent in remaining present right from the initiation of the proceedings, he shall pay the cost which is quantified at Rs.5,000/(Rupees Five thousand only). He shall deposit the said amount before the Competent Authority and Addl. Collector (ULC) within a period of one week from today. On such deposit being made, the said authority shall issue notice of hearing of the case to the parties. Rule

is made absolute accordingly to the said extent. Direct service is permitted.

Sreeram.